THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.25421 OF 2005

Dated: 30-11-2005

Between

Toddy Cooperative Society, Tirumalapur Village, Kulakacharla Mandal, Ranga Reddy District, Rep. by its President, Krishnaiah Goud.

...PETITIONER

AND

Deputy Commissioner of Prohibition & Excise, Hyderabad Division, Hyderabad and another.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the impugned proceedings of the second respondent vide Cr.No.E5/5722/2005 dated 25.08.2005 rejecting his request for sending second sample bottle to the independent lab as illegal and arbitrary.

Petitioner submits that an inspection was made on 14.06.2005 in respect of the Toddy Cooperative Society, Tirumalapur village bearing Licence No.326, and certain stocks of toddy were tested with required chemicals in the presence of the vendor
Sri Gowraram Govind and found the samples free from Chloral Hydrate. However, on suspicion three samples of toddy were drawn and a case was registered vide

C.O.R.No.154/2005-06 dated 14.06.2005 under Rule 24 of the Andhra Pradesh (Arrack and Toddy Licences, General Conditions) Rules, 1969 (for short 'the Rules') and one sample was sent to the Government Chemical Examiner for Prohibition & Excise for analysis and report. The Chemical Examiner vide his report dated 13.07.2005 opined that the sample is fermented toddy adulterated with Chloral Hydrate. Based on the said report the licence of the petitioner was suspended on 02.08.2005. Therefore, a show cause notice dated 31.08.2005 was issued calling upon the petitioner to submit his explanation as to why his licence shall not be cancelled.

It is the case of the petitioner that, in fact, the suspension order dated 02.08.2005 was served on him only on 20.08.2005 and therefore, he has made a representation on 23.08.2005 to the second respondent requesting to send the second sample bottle to the independent laboratory preferably State Food Laboratory, Nacharam, for further analysis, by accepting D.D.No.370521, dated 21.08.2005 for Rs.250/- of Oriental Bank of Commerce, Dilsukhnagar, Hyderabad. The said representation has been rejected by the impugned order dated 25.08.2005 stating that as per Rule 24 of the Rules in case where the licensee was not present at the time of taking the sample the licensee should apply within seven days from the date of communication of drawl of sample by the Excise Superintendent, but no such request has been made within the stipulated time and as such the petitioner is not entitled to get the second sample tested.

Learned Government Pleader appearing for the respondents submits that, in fact, the suspension order dated 02.08.2005 was served on the petitioner on 08.08.2005 as noted in the show cause notice dated 31.08.2005.

The learned counsel for the petitioner submits that the suspension order was not served on 08.08.2005 but it was served only on 20.08.2005. A particular plea was taken in the said representation dated 23.08.2005 stating that the copy of the suspension order was served only on 20.08.2005. The said allegation about the service of suspension order on 20.08.2005 has not been disputed in the impugned order. Therefore, it cannot be said that the said suspension order was served on 08.08.205.

If the President or the members of the society are not present the society is entitled

to make a request to send the second sample bottle for analysis within seven days from the date of communication of the order about drawl of sample. In the instant case, admittedly, when the sample was tested on 14.06.2005 it was free from Chloral Hydrate. But on suspicion, the sample was sent to the Chemical Examiner for further analysis and the same was found adulterated with Chloral Hydrate. Therefore, I am of the opinion that under proviso to Section 31 of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') the petitioner has got a right to be given an opportunity to question the analysis report of the Excise Department. It is a specific case of the petitioner that he was not present at the time of inspection and one Sri Gowraram Govind, a vendor was present, who is not a member of the society. Therefore, the petitioner had no notice served on him about the alleged adulteration of toddy.

Having regard to the facts and circumstances of the case,
the impugned order dated 25.08.2005, rejecting the request of the petitioner for sending the second sample bottle to the independent laboratory, is set aside and the second respondent is directed to send the second sample bottle to the independent laboratory as requested by the petitioner through his representation dated 23.08.2005. Immediately after receipt of the report from the independent laboratory the petitioner may be furnished a copy of the same and after giving reasonable opportunity final order may be passed within four weeks from the date of receipt of the report. However, it is made clear that this Court is not inclined to interfere insofar as the suspension of the licence is concerned.

The writ petition, with the above observation, is accordingly disposed of.

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V. ESWARAIAH, J

November 30, 2005

DSK